File No. 7/10/47-Public(B).

Collection No.

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Government of India.

Ministry of Home Affairs.

Public (B) Section.

Pros. / Serial Nos.

Subject.

Flag Indian National - Use as Trade Mark.

Previous References.

Later References.

NATIONAL ARCHIVES OF INDIA

S. 37 (Unbleached).
MGIPC—S2—650 (S & P) M F P—(9663/A/M.655)—3-12-46—35,00,000.

MINISTRY OF E.A. & C.R.

DY.No.D.6441-OSII/47.

(2)

Malaya - Use of Indian National Flag as Trade Mark - Question of Propriety.

Serial No. 1.

This is very extraordinary and we must support the attitude of our Representative.

Sd. S. Dutt.
17-12-1947.

Our Representative has already lodged his protest with the Malayan Union Government and has asked for the cancellation of the grant of absolute and exclusive property rights under the Trade Mark. We may await the reply of the Malayan Union Government. The Constituent Assembly Secretariat and the Ministry of Commerce may see for remarks, if any. The question whether we should make any further representation to the Malayan Union Govt. will be considered on return of the file from the two offices.

Sd. R.N. Saletore,
UNDER SECRETARY
Tel.2073/4
22-12-1947.

Constituent Assembly Sectt.
Ministry of Commerce.
Ministry of E.A.& C.R. U.O.No.6441-OSII/47, dt.23-12-47.

CONSTITUENT ASSEMBLY OF INDIA.

This is a clear misuse of the National Flag and we may support the action taken by our Representative with the Malayan Union. As observed by Mr. Thivy, any Flag of any country should not be permitted to be used as a trade mark for commercial enterprises.

2. The file may be passed on to the Ministry of Commerce through the Ministry of Home Affairs, who it is understood are convening a Conference regarding the uses of the National Flag.

Itd. 2/1/48. Itd. 2/1/48.

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(3) Reference note on pre-page.

Article 6ter of the Industrial Property Convention provides inter alia that the countries of the Union agree to refuse or to cancel the registration and to prohibit the utilization without authorisation by the competent authorities either as trade marks or as parts of trade marks, public armorial bearings, insignia or decorations, official hall marks or signs indicating an official warrant adopted by them, flags and other state emblems of the countries of the Union.

2. Each member state has to notify the International Bureau a list of State emblems which it desires to protect. If within one year from the receipt of the notification no objection is taken by a state, the obligations of Article 6ter of the Convention apply to the state.

3. The practice in U.K. appears to be as follows:- Representations of State emblems are not published in the Trade Marks Journal but a notice is inserted stating that they may be seen at the Trade Marks Registry. National colours per se except when shown in the form of a state flag or other state emblem, are not to be refused registration. Application for the registration of trade marks consisting of state orders and State medals are also generally refused.

Refer Sec.11 of the Act of 1938, and Sec.61 of the same Act, as amended by the Amendment Act of 1943.

4. Malaya Federated States being the part of the British Empire and Commonwealth of Nations, follow more or less the same procedure. Due to recent changes there, I am not sure of the exact position as is obtained there at present. Our Representative there or the Foreign Ministry may be in a position to state the exact position.

Ref: Encyclopaedia Brittanica Vol.Trade Marks.

5. India was not a member of the International Convention till 1940, but was expected to join the Convention shortly after war.

Commerce Ministry are in a position to say whether we have done so or not.

6. The practice of the Registry in this country generally conforms to that in the U.K.

Sec.8 and 69 of The Trade Marks Act, 1940.

7. According to U.S.A. trade marks Act, 1906, the U.S.A. policy is to require registration of all trade marks unless they (a) consist of or comprise scandalous or immoral matter, (b) consists of or comprise flag or insignia of the U.S.A. or

Ref. Encycl. Britannica.

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any state or municipality or of any foreign nation, (c).....

8. The attitude taken by our representative is, as far as above references show, legally and diplomatically correct and there seems nothing to prevent us from fully supporting it. (It is the duty of the Malayan Government to see that the breach (of Article 6ter of the Convention does not take place.

Provided of course that the Convention applies to both countries.

Submitted.

Sd. Brij Bhushan.
3-1-1948.

U.S.

I agree generally with the above note by the R.O.

There is ample support for the proposition that the use of the National Flag of any country in a trade mark is not to be allowed, unless authorised by a competent authority. Rule 17 of the United Kingdom Trade Marks Rules provides:

"Where a representation of the armorial bearings, insignia, orders of chivalry, decorations or flags of any state, city, borough, town, place, society, body corporate, institution or person appears on a mark, the Registrar, before proceeding to register the mark, shall, if he so requires, be furnished with a consent to the registration and use of such emblems from such official or other person as appears to the Registrar to be entitled to give consent, and in default of such consent he may refuse to register the mark".

There is no corresponding rule in the Trade Marks Rules made under the Indian Trade Marks Act, 1940, but the practice of the Registry in this country is expected to conform to that obtaining in U.K., and the Registrar in India, in the exercise of his discretion, as well as under the provisions of section 8 of the Act, will refuse applications for the registration of such trade marks. (See S. Venkateswaran: The Trade Marks Act, 1940, page 702). As the British Colonies generally follow the model of the English Trade Marks legislation, we can expect the Malayan Government also to take the same line, where an objection is raised.

P.T.O.

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(3)

The Home Ministry should see before the file goes to the Commerce Ministry.

Sd. K.V. Padmanabhan,
5-1-1948.
Tel.- 3401.

Home Ministry.

C.A.U.O.No.D.2/Cons/48, dated 5-1-1948.

MINISTRY OF HOME AFFAIRS.

Notes pp. 1-4 explain the position clearly regarding prohibition in the use, among other things, of National Flags as trade marks. We have included this item in the Agenda for the Flag Meeting on 16-1-1948. A copy of these notes is being taken. Secretary may be interested to see for information.

2. We agree in the action taken by the India Government's Representative in Malaya.

Sd.A.V.Raman.
7-1-1948.

Sd. R.N. Banerjee,
9-1-1948.
SECRETARY.

Ministry of Commerce

Ministry of Home Affairs u/o. No. P.113/48—Pub. (B) dated 10/1/1948

NATIONAL ARCHIVES OF INDIA

(Ministry of Commerce) (6)

India has not yet become a member of the International Industrial Property Convention and as such its provisions cannot be invoked for prohibiting the use of India's national flag as trade mark by a firm in Malaya. As far as we are aware, Malaya is also not a member of the Convention. The use of our national flag for commercial purposes is, however, most undesirable and we may strongly support the action taken by our representative in the Malayan Union.

2. As regards the provisions in the Trade Marks Act with respect to the use of national flags etc., as trade marks in the Indian Union, it may be stated that ~~xxxxxxxxxx~~ though there is no specific section in the Act prohibiting such use, the Central Government can, by virtue of their powers under Section 16(1) of the Act, direct the Registrar of Trade Marks to refuse registrations for such marks. Thus so for as the Dominion of India is concerned, we are in a position to refuse registration of emblems signifying State patronage. There seems, therefore, to be no immediate necessity for us to include provisions similar to those of Rule 17 of the United Kingdom Trade Marks Rules in our Trade Marks Act or Rules. We may, however, invite the comments of the Registrar of Trade Marks in the matter. A draft is submitted for approval.

3. A copy of the relevant notes and correspondence is retained in this Ministry for any further action which may be necessary. The papers may now be returned to the Ministry of E.A. & C.R. They will no doubt keep us informed of the Malayan Union Government's reactions to the protest made by our Representative in Malaya.

~~Sd/- x x x~~ Ild.

26.1.48.

Sd/- x x x

30-1-48.

Ministry of E.A & C.R.
Ministry of Commerce u.o. 115~~6~~-Tr(a)/48 dt.9.2.48.

p.t.o.

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Ministry of E.A & C.R.
(C.R.Wing)

Ref:- Notes pages 1-5.

It will be seen that the Constituent Assembly of India and the Ministries of Home Affairs and Commerce have all strongly supported the Action taken by our Representative. Thus there is a case to make a further representation to the Govt. of the Federation of Malaya in case that Govt. have not yet disallowed the use of Indian National Flag as a Trade Mark for commercial enterprises. We may apprise our representative of the pos tion and ~~xix~~ ask him to further represent the case if the Malayan Govt. have not yet replied to the Protest lodged by him. A draft d.o. is put up.

Sd/- x x x x
25.2.48.

Sd/-x x x x
26.2.48.

NATIONAL ARCHIVES OF INDIA

D.O.No.428/47-PS. Office of the Representative of the Government of India,
98, Robinson Road, Singapore.

(Camp) Kuala Lumpur, 12th December, 1947.

Sub:- Use of Indian National Flag as Trade Mark - Question of propriety.

My dear Dutt,

Mr. Nataraja Pillai has sent me a copy of page XXV of the Malayan Union Government Gazette dated 6th November, 1947, in which the National Flag of India isdepicted as one of the Trade Marks of sweetened condensed milk sold by S.A. Abdul Wahab & Co. Penang, an Indian Muslim Firm.

It is a well-known fact that on the Indian Independence Day Celebrations on August 15th, only a few among the large majority of Muslims who hail from the districts and provinces in the Indian Union, hoisted the Indian National Flag. It was an indication of where their real sympathy and support lay. Such being the case, it is strange that an Indian Muslim Firm should use the Indian National Flag as a trade mark under a false pretence. This is an example of unscrupulous commercial exploitation.

It is likely that there may be similar cases of misuse of the National Flag of India as Trade Marks by private merchants and firms. I do not know whether there is any legal prohibition against the use of the Flag as a Trade Mark. I have not seen the National Flag of any country being used as a trade mark or for any other similar purpose and I am opposed to the use of the National Flag as a trade mark by any merchant or firm. It is derogatory to the honour of the Flag.

In the meantime, I have taken action in the matter as per copy of letter (enclosed) addressed to the Director of Industry & Commerce, Malayan Union, Kuala Lumpur. The Malayan Union Government Gazette sheet containing the notice is enclosed for your reference.

Yours faithfully,

Sd/-(J.A. THIVY).

To

S. Dutt, Esqr., O.B.E., I.C.S.,
Secretary to the Govt. of India,
Ministry of External Affairs &
Commonwealth Relations (India),
NEW DELHI 3.

NATIONAL ARCHIVES OF INDIA

Ref: No.423/47-PS.

(4)

Office of the Representative of the
Government of India,
98, Robinson Road, Singapore.
(Camp) Kuala Lumpur, 12th December, 1947.

To

The Director of Industry and Commerce,

Malayan Union, Kuala Lumpur.

Sir,

I have the honour to refer you to the Malayan Union Government Gazette of November 6, 1947, at page XXV under the heading "Trade Marks Notice". S.A. Abdul Wahab & Co., of No.64-C, Bishop St ., Penang, has registered the Indian National Flag as his Trade Mark for sweetened condensed milk.

2. Apart from the fact that a good number of South Indian Muslims who are now nationals of the Indian Union yet do not honour the National Flag of the Indian Union, I feel that the Indian National Flag or for that matter any flag of any country, should not be permitted to be used as a trade mark for commercial enterprises.

3. I have already received complaints from Indians about this. I would therefore request you to review your decision, granting registration of this Trade Mark on the ground of maintaining the honour and dignity of the country's National Flag, and therefore cancel this grant of absolute and exclusive property rights under this Trade Mark to S.A. Abdul Wahab & Co., of Penang.

4. I shall be highly obliged if you will kindly take the necessary action and inform me at your early convenience.

I have the honour to be,
Sir,
Your most obedient servant,

Sd. J.A. Thivy.

REPRESENTATIVE OF THE GOVT. OF INDIA.

NATIONAL ARCHIVES OF INDIA